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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

SAMUEL HOOKE, natural father of, JUSTIN
HOOKE, deceased, CAROL HOOK, natural
mother of JUSTIN HOOKE, deceased,

Plaintiffs,

vs.

KEN SALAZAR; United States Secretary of the
Interior; DEPARTMENT OF INTERIOR,

Defendants.

No.

**FREEDOM OF INFORMATION ACT
COMPLAINT**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. In this civil action for declaratory and injunctive relief, Plaintiffs SAMUEL and CAROL HOOKE (Hereinafter "Hooke") challenges the failure of Defendants KEN SALAZAR, United States Secretary of the Interior and the DEPARTMENT OF INTERIOR (collectively "the Secretary") to comply with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the Secretary to disclose records withheld wrongfully after a FOIA request.

1 2. FOIA requires that deferral agencies respond to public requests for documents
2 to increase public understanding of the workings of government and access to government
3 information. The records sought by Plaintiffs concern the Bureau of Indian Affairs and
4 their involvement in the investigation of a fatality that occurred during the very early hours
5 of April 24, 2011 on the San Carlos Apache Reservation in Arizona. Specifically, Plaintiffs
6 sought copies of surveillance reports, supplemental reports, two DVDs (surveillance footage
7 from Apache Gold Casino inside and outside) from the acting supervisor of the inspectors at
8 the Apache Gold Casino-Gaming Office in San Carlos; Copy of the San Carlos Apache
9 Tribal Police Department Report #2011-06285 including supplemental reports; Apache
10 Gold Casino reports/correspondence and crash diagram.

13 3. The information sought is of public concern because it relates to the federal
14 management of gaming casinos and liquor laws and the implementation of public laws
15 governing those activities.

17 4. The information is sought, in part, due to Plaintiffs' tort claims regarding the
18 wrongful death of their decedent son.

19 5. On October 6, 2011, Plaintiffs submitted its FOIA request (2012-00693) to the
20 U.S. Department of the Interior Bureau of Indian Affairs. The Agency failed to respond
21 within 20 days as required by FOIA. On April 11, 2012 the U.S. Department of the Interior
22 Bureau of Indian Affairs provided a partial denial.
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1 6. On May 1, 2012, Plaintiffs submitted their FOIA Appeal (2012-102) to the
2 partial denial that was dated April 11, 2012. The agency failed to respond with its
3 determination within 20 days as required by FOIA 5 U.S.C. § 522 (a)(6)(A)(ii).
4

5 7. The Secretary's conduct is arbitrary and capricious and amounts to a denial of
6 Plaintiffs' FOIA request. The Secretary's conduct frustrates Plaintiffs' efforts to educate
7 the public regarding ongoing activities of the Department of Interior Bureau of Indian
8 Affairs and is a violation of FOIA.
9

10 8. Plaintiffs seek a court order requiring the Secretary to immediately make a
11 determination and produce the documents sought in the now over nine (9) month old,
12 October 6, 2011 FOIA request and May 1, 2012 FOIA Appeal, as well as other appropriate
13 relief.
14

15 **II. JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over this action pursuant to the Freedom of
17 Information Act, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 (federal question
18 jurisdiction).
19

20 10. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e),
21 because a substantial part of the events and omissions which gave rise to this action
22 occurred in this district. Venue is also proper under 5 U.S.C. § 522(a)(4)(B).
23

24 **III. PARTIES**

25 11. Plaintiffs SAMUEL and CAROL HOOKE are the natural parents of the
26 decedent Justin Hooke who died due to the alleged over service at the Apache Gold Casino.

1 12. The Secretary's failure to comply with FOIA harms the interests of Plaintiffs,
2 and other members of the San Carlos Apache Tribe, and other members of the public.

3 13. Defendant KEN SALAZAR United States Secretary of the Interior, is the
4 highest ranking official within the Department of the Interior and, in that capacity, has
5 ultimate responsibility for complying with FOIA. He is sued in his official capacity.
6

7 14. Defendant DEPARTMENT OF INTERIOR is an agency required by law to
8 comply with FOIA.
9

10 IV. STATUTORY BACKGROUND

11 A. The Freedom of Information Act

12 15. The Freedom of Information Act allows any person to obtain access to the
13 records of federal agencies provided the statute's disclosure exemptions do not apply to the
14 requested documents. 5 U.S.C. § 552.
15

16 16. On January 21, 2009, President Obama issued an Executive Memo declaring a
17 presumption under FOIA that "openness prevails," and providing that:

18 The Government should not keep information confidential merely
19 because public officials might be embarrassed by disclosure, because
20 errors and failures might be revealed, or because of speculative or
21 abstract fears....All agencies should adopt a presumption in favor of
22 disclosure, in order to renew their commitment to the principles
23 embodied in FOIA, and to usher in a new era of open Government.
The presumption of disclosure should be applied to all decisions
involving FOIA.

24 17. After receiving a FOIA request, an agency has twenty working days to
25 determine "whether to comply with such a request and shall immediately notify the person
26 making such request of such determination and the reasons therefor, and of the right of such

1 person to appeal to the head of the agency any adverse determination.” 5 U.S.C. §
2 552(a)(6)(A)(i).

3 18. “Upon any determination by an agency to comply with a request for records,
4 the records shall be made promptly available to such person making such request.” 5 U.S.C.
5 § 552(a)(6)(C)(i).
6

7 19. In “unusual circumstances,” an agency may take ten additional days to
8 respond to a request. However, FOIA does not permit an agency to delay a response
9 indefinitely. 5 U.S.C. § 552(a)(6)(B).
10

11 20. The Department of Interior regulations governing FOIA provide that the
12 requester may “consider a nonresponse within these time limits as a denial of records and
13 file a formal appeal...or lawsuit.” 43 C.F.R. § 2.12(a).
14

15 21. FOIA states that a requester “shall be deemed to have exhausted his
16 administrative remedies...if the agency fails to comply with the applicable time limit
17 provision.” 5 U.S.C. § 552(a)(6)(C)(i).
18

19 22. FOIA provides this Court with “jurisdiction to enjoin the agency from
20 withholding agency records and to order the production of any agency records improperly
21 held from the complainant.” 5 U.S.C. § 552(a)(4)(B).
22

23 23. FOIA permits the Court to assess “reasonable attorney fees and other
24 litigation costs reasonably incurred in any case...in which the complainant has substantially
25 prevailed.” 5 U.S.C. § 552(a)(4)(e)(i).
26

B. The Administrative Procedure Act

24. The Administrative Procedure Act (“APA”) states that a reviewing court “shall compel agency action unlawfully withheld or unreasonably delayed,” 5 U.S.C. § 706(a); and “shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. § 701(a).

V. FACTUAL AND PROCEDURAL BACKGROUND

A. Incident of April 23-April 24, 2011

25. On the evening of April 23, between the hours of midnight and approximately three a.m. decedent Justin Hooke was an invitee at the Apache Gold Casino and spent several hours drinking at that establishment. Surveillance footage exists which allegedly shows decedent intoxicated to the point where he was staggering and falling while he was walking around inside of and through the Casino. There is allegedly additional surveillance footage showing Justin staggering as he and his companions exited the Casino, across the parking lot into his vehicle with the physical assistance of one or more companions, and two vehicles leaving the casino parking lot.

26. The decedent then traveled from Highway 70 to Route 6 where he lost control of his pickup truck, causing his vehicle to roll several times ultimately ejecting him from his vehicle and killing him. The decedent’s blood alcohol was tested post-mortem to be .268.

1 27. This incident has brought concern into the public forum about the San Carlos
2 Apache Tribe and the Bureau of Indian Affairs' investigation management and appropriate
3 public disclosure and law enforcement of these types of catastrophic events.
4

5 28. The Department of Interior Bureau of Indian Affairs is charged with the
6 oversight, operation and/or funding of tribal law enforcement, tribal courts and detention
7 facilities on federal Indian lands. It also has several areas of activity criminal investigations
8 and police services, detention/corrections, inspection/internal affairs, tribal law enforcement
9 and special initiatives, the Indian police academy, tribal justice support, program
10 management as well as technical assistance to tribal law enforcement programs. It also
11 operates four divisions, drug enforcement, corrections, Indian police academy and law
12 enforcement.
13

14 29. The Department of Interior Bureau of Indian Affairs under the supervision of
15 the Deputy Assistant Secretary is responsible for implementing those gaming-related
16 activities assigned to the Bureau of Indian Affairs by the Indian Gaming Regulatory Act and
17 other Federal Laws. The office develops policies and procedures for review and approval
18 of: tribal/state compacts; per capita distribution of gaming revenues; and requests to take
19 land into trust for purpose of conduction gaming. Work is coordinated with the National
20 Indian Gaming Commission and with state, local and tribal governments that may be
21 impacted by gaming proposals.
22
23

24 **B. The Secretary's Withholding of Information Concerning the Incident of**
25 **April 23-24, 2011**
26

1 30. On October 6, 2011, HOOKE filed a FOIA request (2012-00693) with the
2 U.S. Department on Interior Bureau of Indian Affairs seeking: 1) Any and all surveillance
3 videos indoor and outside of the premises from April 23, 2011 through April 24, 2011 from
4 Apache Gold Casino; 2) Any and all 911 audio files in the possession of BIA regardless of
5 source; 3) CD containing the raw data from any incident reconstruction completed in this
6 matter; 4) Any notes taken when completing any investigation; 5) List of all evidence;
7 known by the BIA or in possession of the BIA; 6) Any and all forensic reports; 7) Complete
8 set of photographs taken concerning this incident; 8) Any and all police officer interviews
9 including audio, video and/or written; 9) Any and all witness statements, audio and/or video
10 recorded and/or written; and 10) Any and all supplemental reports. (A copy of this letter is
11 attached as Exhibit A)
12
13

14 31. Rather than responding within twenty (20) days as required by 5 U.S.C. §
15 552(a)(6)(A)(ii) or even the extra ten day working day limit for extension under “special
16 circumstances” pursuant to 5 U.S.C. § 552(a)(6)(B), these Defendants waited approximately
17 five months before providing Plaintiffs the courtesy of any communication whatsoever,
18 which was to request a consent to release on March 2, 2012. On February 9, 2012,
19 Plaintiffs HOOKE re-sent their request via Facsimile. (A copy of this letter is attached as
20 Exhibit B) On March 1, 2012 Plaintiffs HOOKE received a request for a signed consent to
21 release. (A copy of this letter is attached as Exhibit C) On March 2, 2012 Plaintiffs
22 HOOKE sent via facsimile a consent to release to the U.S Department of Interior. (A copy
23 of this letter is attached as Exhibit D) On April 11, 2012, Plaintiffs HOOKE received a
24 partial denial. (A copy of this letter is attached as Exhibit E)
25
26

1 32. On May 1, 2012, Plaintiffs HOOKE filed their FOIA Appeal (2012-102). (A
2 copy of this letter is attached as Exhibit F) To date, the Secretary has not provided its
3 determination whether to comply with the request for records, or the requested documents
4 in response to Plaintiffs' May 1, 2012 request. In so doing, the Secretary has failed to meet
5 the twenty (20) day limit imposed by FOIA for its determination with respect to Plaintiffs'
6 request, 5 U.S.C. § 552(a)(6)(A)(ii), and has failed to comply with the ten (10) working day
7 limits for extensions, 5 U.S.C. § 552(a)(6)(B).

8
9 33. The Secretary has violated and continues to violated FOIA and the APA by
10 withholding its responsive determination and requested documents. This also deprives the
11 Plaintiffs, other members of the San Carlos Apache Tribe, and other members of the public
12 of valuable information concerning the federal government's management and appropriate
13 public disclosure and law enforcement of these types of catastrophic events.

14
15 34. Plaintiffs HOOKE exercise the right to commence this action pursuant to the
16 Department of Interior's FOIA regulations that deem a requester may "consider any
17 nonresponse within these time limits as a denial of records and file a formal appeal...or
18 lawsuit." 43 C.F.R. § 2.12(a). Additionally, Plaintiffs HOOKE "shall be deemed to have
19 exhausted [its] administrative remedies...if the agency fails to comply with the applicable
20 time limit provisions." 5 U.S.C. (a)(6)(C)(i).

21
22
23 **VI. CLAIMS FOR RELIEF**
24 **FIRST CLAIM FOR RELIEF**

25 **(Violation of the Freedom of Information Act)**

26 35. HOOKE re-alleges and incorporates by reference all the allegations set forth
in this Complaint, as though fully set forth below.

1 36. The Secretary's failure to respond with a determination with respect to
2 Plaintiffs' FOIA request and to disclose the requested documents is a violation of FOIA, 5
3 U.S.C. § 552 and the agency's own regulations, 43 C.F.R. Part 2, promulgated thereunder.
4

5 37. The Secretary's failure to provide the requested documents within the required
6 timeframe violates 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B).
7

8 **SECOND CLAIM FOR RELIEF**
9 **(Violation of the Administrative Procedure Act)**

10 38. HOOKE re-alleges and incorporates by reference all the allegations set forth
11 in this Complaint, as though fully set forth below.

12 39. The Secretary's failure to disclose documents responsive to Plaintiffs' request
13 constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the
14 APA, 5 U.S.C. §§ 701-706. The Secretary's failure in this matter is arbitrary, capricious,
15 and constitutes an abuse of discretion, not in accordance with the law and without
16 observance of procedure required by law, all in violation of the APA.
17

18 **VII. PRAYER FOR RELIEF**

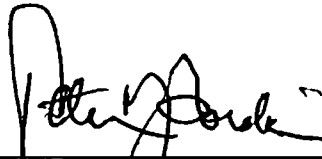
19 For the reasons stated above, Plaintiffs respectfully request that the court grant the
20 following relief:

- 21 1) Enter an Order declaring that the Secretary has wrongfully withheld the
22 responsive determination;
23
24 2) Order the Secretary to immediately make its determination with respect to
25 Plaintiffs' request and disclose to Plaintiff all wrongfully withheld documents;
26

- 3) Maintain jurisdiction over this action until the Secretary is in compliance with FOIA, APA and every order of this Court;
- 4) Award Plaintiffs its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- 5) Grant Plaintiffs such other relief as the Court deems just and proper.

DATED this 30th day of July, 2012

LAW OFFICE OF PETER GORSKI, PLC



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Attorneys for Plaintiffs